UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 19

MILGARD MANUFACTURING, INC., VINYL EXTRUSION DIVISION

Employer

and

Case 19-RC-14483

INTERNATIONAL LONGSHORE & WAREHOUSE UNION, LOCAL 33, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions.²

SUMMARY

The Employer is engaged in the business of manufacturing vinyl parts used in windows and glass portions of doors. The Petitioner filed the instant petition seeking an election in a plant-wide unit of 160 employees (Unit). The parties agree to the exclusion of office clerical employees.³ However, contrary to

1 Both parties filed timely briefs, which were duly considered.

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The parties stipulated that the following employees are excluded as office clerical employees: Dianna Suchan, Tiffany Grant, Janine Hansen, Chris Dotson, Dine Hart, Henry Bailey, and Carol Togesen. The parties further stipulated to exclude the programmer and designer positions because they did not share a community of interest with any unit found appropriate. In light of these stipulations and the record evidence, I shall exclude the named office clericals and the programmer and designer positions from the Unit. The parties were not clear at the hearing and/or in their briefs about one or two inventory control positions and whether these were office clerical positions to be excluded from the Unit. Consequently, I shall permit the inventory control employees to vote subject to challenge.

the Petitioner, the Employer, during the hearing, maintained that its distribution department (5 drivers), shipping and receiving department (13 employees), recycling department (18 employees), and 2 purchasing employees lacked a sufficient community of interest with other employees to be included in the petitioned-for Unit.⁴ In addition, the Employer, in its brief, changed its position regarding Doug Perry, a purchasing department employee, by stipulating to Perry's inclusion in the Unit. However, the Employer continues to contend that the other purchasing employee, Teresa Hundley, should be excluded.

Based on the record evidence, I find that the Employer has not established that the interests of the employees in its distribution, shipping and receiving, and recycling departments are so disparate as to require their exclusion from the Unit. As for the purchasing employees, I find the evidence insufficient to make a decision as to their inclusion or exclusion and shall allow them to vote subject to the Board's challenge procedure.

Below, I have set forth a section dealing with the record evidence relating to background information about the Employer's operations and the community of interest between the employees at issue. Following the Evidence section is my analysis of the applicable legal standards in this case and a section setting forth the direction of election.

I.) EVIDENCE

A.) The Employer's Operation

The Employer, a division of Milgard Corporation, is a State of Washington corporation⁵ engaged in the manufacture of vinyl products at its Plant located in Fife, Washington.⁶ These vinyl products are used by the Employer's customers in the production of windows and doors.

The Unit of employees sought by the Petitioner work in and/or out of the Employer's Plant. Housed within the Plant, is an office area where the office clericals, purchasing and sales employees, along with the plant managers and supervisors, are located.⁷ The largest area in the Plant is dedicated to

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⁴ The Employer, at hearing and in its brief, takes the position that **all leads** should be included in the unit. However, I note that three of the departments, which the Employer contends should be excluded from the Unit, include leads. Thus, the Employer's position in this regard would appear to be inconsistent. Regardless, my decision is not affected by the Employer's position on the leads.

⁵ Milgard Corporation is a subsidiary of Masco Corporation, located in Taylor, Michigan.

The transcript refers to the Employer's facility as located in Fife. The stipulation, Board Exhibit 2, refers to the Employer's facility as located in Tacoma, Washington. I note that Fife is located within the greater Tacoma area. Thus, it appears that the parties are referring to one in the same location.

⁷ The parties stipulate that the following managers and supervisors are §2(11) supervisors: Gail Solberg, Teresa Braund, Kandy Fraser, Fritz Braun, Mike Zazula, Greg Doyle, Sam Hewlett, Bob Shea, Ken Fagan, John Decker, Pete Baldwin, Vince Duffney, George Wheeler, Michael Pratt, Dave Buffelen, Dan Eberle, Steve Rote, Steve Palmer. Accordingly, I shall exclude these

production, consisting of 69,998 square feet. A shipping and receiving area, which also encompasses warehouse space, occupies about 38,811 square feet. The Plant also contains smaller areas for its tool and die, maintenance, and recycling departments, and a parking area for its trucks and trailers. The Employer also utilizes two warehouses, one across the street from the Plant and the other about 2 miles away.

As indicated above, the Employer's business consists of manufacturing vinyl extrusion products, which are used for framing glass windows and doorframes that contain glass. The Employer sells to some outside customers but the majority of its products are sold to Milgard's wood clad, glass tempering, and fabrication operations located close by and throughout the United States.

The general manager, David Wemmer, oversees the Employer's operations. He is assisted by a plant manager, technical manager, engineering supervisor, and office manager. Each manager is responsible for the departments under him or her and each department has a supervisor who reports directly to the responsible manager. The plant manager oversees the production and distribution process, which consists of the production, maintenance, quality assurance, recycling, shipping and receiving, and distribution departments. The technical manager oversees the tool and die manufacturing department, as well as the excluded programmer and designer. The engineering supervisor, who reports directly to Wemmer, supervises the tool and die maintenance or "die tuning" employees. The office manager oversees the excluded office clericals, sales employees, and the two disputed purchasing employees.

B.) Community of Interest Factors

1.) Employee Skills and Degree of Functional Integrationa.) The Production Department

The production process uses polyvinyl chloride (PVC) powder in producing its finished product. These materials are trucked by suppliers to the Employer's facility and pumped into the Employer's large silos. When the material is needed for production, it is pumped out of the silos through a pipeline conveyance system that takes the material and deposits it into each of the numerous production machines or "extruders" on the production floor. The Employer also uses recycled product, which is unloaded by material handlers, who are employed in the production department, into those extruders dedicated to using recycled product. Material handlers use forklifts to transport the recycled material to the extruders. Once the extruders are loaded, an operator (production department employee) will heat the material, whether it is raw or recycled, using thermal and friction heat and run it through the extruder. The

individuals from the unit as 2(11) supervisors based on the parties' stipulation and the record evidence.

The record refers to these products as "profiles," "lineals," or "sticks."

result is a liquid plastic or vinyl that is then forced through forming dies by applying water and vacuums to get the desired shape. The Employer has, at its disposal, 100 different shapes or dies for its product. The resulting product is then cut to the desired length, packaged by production department packers onto totes, which will then be taken by the packer to a crating area. Production department craters then crate the package, tag it, and transport the crate by forklift to a holding area located between the production and shipping and receiving (SR) areas. Production employees must possess a forklift certification to operate forklifts.

b.) Maintenance Department

The maintenance department includes both general and preventive maintenance sections. The 10 or 11 general maintenance employees install new equipment and repair equipment used throughout the Plant. They change the material handling lines and the material flow lines. The two preventive maintenance employees, or maintenance technicians, perform the routine maintenance on the extrusion lines located in the production area.

c.) Tool and Die Departments

Tool and die is divided into two sections. One section, tool and die manufacturing, is managed by the tool and die manufacturing manager. The 17 employees, in the tool and die manufacturing group, manufacture production tooling and dies, replacement parts for existing tooling, and replacement parts for equipment, extrusion lines, filter screens, and the like. The nine employees in the tool and die maintenance section, supervised by the engineering supervisor, tune, clean, and maintain the quality of the production dies.

d.) Quality Assurance Department

The six employees in quality assurance (QA) test the recycled materials and the finished product for quality. In performing their duties, they cut samples of product or reusable material located in the departments or warehouses and bring them into the lab for inspection and testing. They also provide training to production employees on how to use gauges and how to determine whether a part is of acceptable quality. They spend 65 to 75 percent of their work-time inside their lab and 25 to 35 percent of their work-time on the production floor.

e.) Recycling Department

The 18 employees in this department recycle scrap material created during the Employer's production process and recycle "miter" received from suppliers by a recycling department employee in the receiving area. Either production (material handlers) or recycling employees transport the scrap while a recycling employee transports the miter to the recycling department. Production and recycling employees use forklifts or carts in carrying out their transportation

Employer's production process. The Employer calls the employee, who receives the miter in the receiving area, a "miter receiver".

^{9 &}quot;Miter" apparently is a form of scrap material from a production process, which is reused in the

functions. All the Employer's employees who operate forklifts must have a forklift certification.

Recycling employees feed the scrap and miter material into and operate chippers, grinders, shakers and other recycling equipment. They then remove unusable scrap and sort reusable material off a belt that conveys material into an aspirator. Once processed, the reusable material is transported to the holding area for SR employees to store for later use in the production process.

f.) Shipping and Receiving Department

The 13 SR department employees electrically scan product code off crates and bundles and take the packages to warehouse locations for storage until eventual shipment. They also store recycled material. They use forklifts to transport the bundles to the on-site warehouse and trucks, with either trailer attachments or flatbeds, to transport bundles to the off-site warehouse locations. The trucks are the same as those used by the Employer's long haul drivers, except that the trucks do not have a sleeping compartment. The trailers are also the same type as those used by the long haul drivers. Forty percent of the SR employees have a certified driver's license to drive trucks. When the product is ready for shipment, SR employees retrieve the package and load it onto a truck. Within a week's time, approximately 40 trucks normally are loaded for shipment.

g.) Distribution Department

The Employer subcontracts out most of the trucking. However, it does employ 4 long haul drivers who deliver to the more distant customers or facilities and one Pacific Northwest (PNW) or local driver who delivers to sites located in Portland, Oregon and Marysville, Washington. Forty percent of the time, the PNW driver unloads his own truck since SR employees are busy. The distribution department drivers, similar to the shipping and receiving drivers, must possess a certified driver's license.

2.) Common Supervision

Employees in each of the departments have their own immediate supervision. However, the only common supervision shared by the agreed upon inclusions is that of the general manager. Additionally, the plant manager oversees all of the disputed employees (except purchasing), and all the agreed to inclusions except those employees in the tool and die manufacturing and maintenance departments.

3.) Employee Contact and Interchange

There is some contact and interchange among the disputed and undisputed departments. For example, during the yearly production shut down period, Plant employees, including production employees, sign up for overtime opportunities in recycling. A recycling lead also contacts production employees about the needs production will have that day for specific recycled material and about what production was performed the previous night so as to allow the lead

to judge the type of recycling work he will receive that day from production. Additionally, when there are power outages, averaging two times a year, recycling department employees help out in production by cleaning the area and operating the saws.

Maintenance employees have contact with all departments, with the exception of distribution, because the equipment they work on is located throughout the plant.

Forklift drivers in recycling and production will deposit or retrieve bundles for their respective departments when SR forklift drivers are busy. SR forklift drivers return the favor and deliver bundles from storage to other departments when those departments are busy. As noted above, the production department employees also deliver scrap material to recycling.

QA employees contact drivers about pick-ups for their return trips and drivers will inform QA employees when the pick-ups have been delivered to the plant. QA employees will also ask SR employees where specific bundles have been stored if testing reveals a problem with those bundles. Drivers will occasionally help SR employees in unloading the trucks, the PNW driver more so than the long-haul drivers.

All the employees have access to either of the two break rooms and employees from each department attend group safety, monthly, and 90-day meetings, as well as the plant picnic and holiday parties.

4.) Working Conditions and Benefits

Except for the distribution department drivers, employees in each department generally work 8, 10 or 12 hour staggered shifts. For example, the preventive maintenance and some recycling, QA, and SR employees work an 8-hour day, Monday through Friday, as do office clericals and purchasing employees. Employees in both tool and die divisions work 8 hours on a day or night shift. Maintenance and some recycling employees work 10-hour shifts. Some QA, production, and SR employees work 12-hour shifts.

All the employees at issue are paid hourly. The Employer uses a grade level to determine their pay, with the starting pay determined by skill level. For example, the pay for operators, material handlers, QA techs, recycling department leads, and the miter receiver range from \$9.25 to \$16.02. The only exception to the grade system is the distribution department in which the drivers receive an hourly pay of \$13 to \$14.50 for driving, \$8.00 for waiting at a customer's facility while his or her truck is unloaded, and a per mile amount and a stop amount for each stop.

All the employees, including distribution drivers, are subject to the same handbook, containing the Employer's policies, rules and regulations. All the

employees receive the same fringe benefits. Except for possibly office employees, employees from all the other departments (including employees from all included departments) are on one of four teams. These teams are determined more by linking shifts than by department; thus, employees from different departments are placed on the same team. Bonuses of a maximum of \$750 for each person on a team are based on the performance of everyone on the team.

II.) ANALYSIS

As noted above, the Union seeks a plant-wide unit while the Employer contends that certain departments or classifications should be excluded from that plant-wide unit based on the community of interest standard. In resolving unit determination issues, it is well established that the Board need not determine the only appropriate unit, or the *ultimate* appropriate unit, or the *most* appropriate unit; the Act requires only that the unit be an appropriate unit. See Morand Bros. Beverage Co., 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7th Cir. 1951); Omni International Hotel, 238 NLRB 475 (1987). Moreover, Congress expressly contemplated the plant-wide unit in Section 9(b) of the Act and the Board has held that "[a] plant-wide is presumptively appropriate under the Act, and a community of interest inherently exists among such employees." Kalamazoo Paper Box Corp., 136 NLRB 134, at 136 (1962); see also Airco, Inc., 273 NLRB 348, at 349 (1984); Livingstone College, 290 NLRB 304, 305 (1988); Ippolito, 313 NLRB 715, 717 (1994), enfd. 150 LRRM 2575 (3d Cir. 1995); Marks Oxygen Co. of AL, 147 NLRB 228 (1964). The only times the Board has not found such units appropriate is under unusual circumstances where an employer had demonstrated "that the interest of a given classification are so disparate from those of other employees that they cannot be represented in the same unit." Airco, Inc., 273 NLRB at 349. Thus, while the community of interest standard is the same, the burden is placed on Employer to demonstrate that the interests of a given classification are so disparate from those of other employees that they cannot be represented in the same unit. Id.

Here, the Employer seeks to exclude distribution drivers, SR employees, and recycling employees from the petitioned-for plant-wide Unit. With respect to the distribution drivers, even though they may be away from the plant most of the time and do little work in the plant, the Board has held that truck drivers nevertheless may have a sufficient community of interest with production and maintenance employees to warrant including them in such a unit. Airco, Inc., supra. Here, the record evidence reveals that the flow of material and products into and out of the plant is functionally related to the operations covered by the other petitioned-for employees. The distribution drivers have common employment and working conditions as other employees and share the same fringe benefits and overall supervision as the other petitioned-for employees. Distribution and SR drivers drive similar trucks and both groups of drivers are required to possess a certified driver's license. Notably, drivers are also part of teams consisting of other Unit and department employees where the performance of all team members is essential to receiving bonuses. In short, the

Employer has not otherwise proffered sufficient evidence that demonstrates that the distribution department drivers have interests so disparate from other Unit employees that would require the drivers' exclusion from the Unit. Accordingly, I shall include the distribution department drivers in the Unit. See also *Marks Oxygen*, supra, and *Dayton Steel Foundry*, 193 NLRB 312 (1971).¹⁰

With respect to the SR employees, the Employer similarly has not demonstrated that SR employees have interests so disparate to Unit employees as to require exclusion. As was the case with the distribution drivers, SR employees share the same working and employment conditions as other Unit employees, as well as the same fringe benefits and bonuses that are determined by team performance. SR employees also share the same overall supervision as those employees whose inclusion is undisputed. Thus, I find that the record evidence does not establish that the interests of the SR employees are so disparate, in relation to Unit employees, that their exclusion would be required. Accordingly, I shall include the SR employees in the Unit.

As for the recycling department, the record reveals contact and interchange between these employees and maintenance employees when the latter services the recycling department's machines and installs any new machines. Similarly, contact and interchange occur between SR and production employees when the latter group has worked overtime in the recycling department. Moreover, the record evidence reveals that the recycling department is functionally integrated with the Employer's production process. As was the case for the interests of distribution drivers and SR employees, the Employer has not shown any interest on the part of recycling employees so disparate as to require their exclusion.

I note that in *Livingstone College*, supra, the employees there had interests that were admittedly diverse and more so than that which appears in this case. In particular, the employees at issue in *Livingstone College*, supra, had separate supervision, different skills, wages, benefits, and hours, and little interchange or interaction. Nevertheless, the Board found the overall unit

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The Employer's cite to *Yuengling Brewing Co.*, 333 NLRB 892, 893 (2001) is inapposite. The issue in *Yuengling Brewing* was whether production employees' inclusion in the petitioned-for unit of maintenance employees was *required*. Here, Petitioner petitioned for a plant-wide unit that includes the distribution department drivers and I further note that no other labor organization seeks to represent these drivers.

In this regard, the Employer argues that it could eliminate the recycling operation and the production process could continue on without interruption because the Employer could produce profiles from PCV purchased from outside suppliers. Notwithstanding the speculative impact of the elimination of the recycling department, the fact remains that the recycling process is currently and functionally integrated into the Employer's production process. In this regard, I note, among other things, that the recycling lead contacts production to ascertain their needs as it relates to production's need for recycled materials. In view of the above and the record evidence, the production department is, to a certain degree, dependent upon the recycling department for providing sufficient amounts of recycled material in a timely fashion. Thus, the record evidence does not support the Employer's argument in this regard.

appropriate. 290 NLRB at 307 fn.1. Here, all the petitioned-for employees share benefits and have interaction and interchange more than the employees at issue in *Livingstone College*, supra. 12

On the basis of the foregoing and the record evidence, I find the following plant-wide Unit appropriate and shall direct an election in this Unit:

All full-time and regular part-time production, maintenance, shipping and receiving, recycling, tool and die manufacturing and maintenance, distribution driver employees and their leads employed by the Employer at its facility located at 1001 54th Avenue E., Fife, Washington, excluding office clericals, the programmer, the designer, supervisors and guards as defined by the Act.

As indicated above, I shall permit Doug Perry, Teresa Hundley, and the inventory control clerk(s) to vote subject to challenge. ¹³

There are approximately 158 employees in the Unit.

III.) DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on

¹² The Employer's reliance on *Lawson Mardon U.S.A, Inc.*, 332 NLRB 1282 (2000) and *Florida Casino Cruises, Inc.*, 322 NLRB 857 (1997) is likewise misplaced. Neither case dealt with petitions for plant-wide units and the issues concerned whether inclusions of certain employees were *required* in the petitioned-for units.

¹³ I find the evidence insufficient to determine whether Hundley's interests are so disparate as to require her exclusion from the unit, or that Perry's interests are such that his inclusion is warranted. Both employees work together servicing the same plant store, which is in charge of ordering, stocking, and distributing tools and other equipment support items and supplies used by all employees, including production and maintenance employees. The store is located on the second floor over the maintenance department and away from the other office clericals and, until June or July of last year, the purchasing employees reported to the maintenance supervisor. The store also carries only those office supplies not readily available on the Internet (the system used by office clericals to order their supplies.)

Record evidence also raises but does not clear up the issue of whether Perry may be a managerial employee and whether his assistant, Hundley, is an office clerical. As for Perry, the record shows that he is included in Employer decisions about what suppliers to use and that he has discretion to commit up to \$20,000-\$25,000 of the Employer's funds for supplies. He also uses his discretion to negotiate contracts with the Employer's suppliers. Both Perry's and Hundley's duties appear to consist of some duties that are of an office clerical nature. In this regard, I note that Hundley is Perry's assistant and as such files his papers and performs other office clerical duties. Moreover, Hundley and Perry report to the office manager, to whom all the excluded office clericals and sales employees report. Under these circumstances and in view of the record evidence, I shall permit Doug Perry and Teresa Hundley to vote subject to challenge.

vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Longshore & Warehouse Union, Local 33, AFL-CIO.

A). Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office in Seattle, Washington, an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I shall make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before February 20, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (206) 220-6305. Since the list will be made available to all parties to the election, please furnish a total of four copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

B.) Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas

conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C.) Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EST on February 27, 2004. The request may **not** be filed by facsimile.

DATED at Seattle, Washington this 13th day of February 2004.

Richard L. Ahearn, Regional Director National Labor Relations Board, Region 19 2948 Jackson Federal Building 915 Second Avenue Seattle, WA 98174

385-7533-8034